

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STEPHEN LEE CHOATE,

Case No. 2:16-cv-00813-RFB-GWF

Petitioner,

v.

NEVADA ATTORNEY GENERAL, et al.,

ORDER

Respondents.

12 This is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §
13 2254. On June 13, 2018, the Court entered an order directing petitioner to file a second
14 amended petition in compliance with the Court's several prior orders. (ECF No. 91). On
15 June 15, 2018, petitioner mailed an amended petition for filing, which the Court received
16 on June 19, 2018. (ECF No. 93). The Court understood the amended to be in response
17 to its June 13, 2018, order. As the amended petition failed to comply with the Court's
18 several prior orders, the Court entered an order on June 26, 2018, dismissing this action.
19 (ECF No. 95).

20 On June 27, 2018, the Court received a second amended petition from petitioner.
21 (ECF No. 97). It appears to the Court that petitioner may not have received the Court's
22 order of June 13, 2018, when he submitted his second amended petition on June 15,
23 2018. The petitioner's June 27, 2018, petition is in compliance with the Court's prior
24 orders. Accordingly, the Court's order and judgment of June 26, 2018, will be vacated,
25 and this action will proceed on the petitioner's "second amended petition" filed with the
26 Court on June 27, 2018.

27 As it is apparent that the petition in this case is wholly unexhausted (see, e.g., ECF
28 No. 97 at 1), as petitioner has previously requested that the court grant him a stay and

1 abeyance so that he may exhaust his state court remedies, (see ECF Nos. 73, 81 # 73),
2 and as the Court finds at least one of petitioner's claims is not plainly meritless and there
3 is good cause for the petitioner's failure to first exhaust his claims in state court, see
4 *Rhines v. Weber*, 544 U.S. 269 (2005), *Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016),
5 the Court will stay this action and hold petitioner's claims in abeyance while petitioner
6 returns to state court to exhaust his claims.

7 In accordance with the foregoing, IT IS THEREFORE ORDERED that the Court's
8 order and judgment of June 26, 2018, (ECF Nos. 95 & 96) are hereby VACATED.

9 IT IS FURTHER ORDERED that this action is stayed pending exhaustion of the
10 unexhausted claims in petitioner's amended petition.

11 IT IS FURTHER ORDERED that the grant of a stay is conditioned upon petitioner
12 further litigating his state post-conviction petition or other appropriate proceeding in state
13 court and returning to federal court with a motion to reopen within forty-five (45) days of
14 issuance of the remittitur by the Supreme Court of Nevada at the conclusion of the state
15 court proceedings.

16 IT IS FURTHER ORDERED, pursuant to Rule 4 of the Rules Governing Section
17 2254 Cases, that the Clerk shall make informal electronic service upon respondents by
18 adding Nevada Attorney General Adam P. Laxalt as counsel for respondents and
19 directing a notice of electronic filing of this order to his office. No response is required
20 from respondents other than to respond to any orders of a reviewing court.

21 IT IS FURTHER ORDERED that the Clerk shall administratively close this action,
22 until such time as the Court grants a motion to reopen the matter.

23 DATED this 29th day of June, 2018.



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25 RICHARD F. BOULWARE, II
26 UNITED STATES DISTRICT JUDGE
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